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Total Number of Pages in This Submission: 5

Application Number	10/749,630
Filing Date	December 31, 2003
First Named Inventor	Heinz-Werner KLEEMANN et al.
Art Unit	1625
Examiner Name	SEAMAN, D. Margaret M.
Attorney Docket Number	DEAV2002/0095 US CNT

ENCLOSURES *(Check all that apply)*

- ☐ Fee Transmittal Form
  - ☐ Fee Attached
- ☑ Amendment/Reply
  - ☐ After Final
  - ☐ Affidavits/declaration(s)
- ☐ Extension of Time Request
- ☐ Express Abandonment Request
- ☐ Information Disclosure Statement
- ☐ Certified Copy of Priority Document(s)
- ☐ Reply to Missing Parts/ Incomplete Application
  - ☐ Reply to Missing Parts under 37 CFR 1.52 or 1.53
- ☐ Drawing(s)
- ☐ Licensing-related Papers
- ☐ Petition
- ☐ Petition to Convert to a Provisional Application
- ☐ Power of Attorney, Revocation Change of Correspondence Address
- ☐ Terminal Disclaimer
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  - ☐ Landscape Table on CD
- ☐ After Allowance Communication to TC
- ☐ Appeal Communication to Board of Appeals and Interferences
- ☐ Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
- ☐ Proprietary Information
- ☐ Status Letter
- ☐ Other Enclosure(s) (please identify below):

Remarks

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	AVENTIS PHARMACEUTICALS INC.		
Signature	Joseph D. Rossi		
Printed name	Joseph D. Rossi		
Date	May 16, 2005	Reg. No.	47,038

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of
KLEEMANN, et al.

Application No.: **10/749,630**

Filed: **December 31, 2003**

Title: **3-GUANIDINOCARBONYL-1-HETEROARYL-PYRROLE DERIVATIVES, PREPARATION PROCESS, THEIR USE AS MEDICAMENTS, AND PHARMACEUTICAL COMPOSITIONS COMPRISING THEM**

Examiner: D. M. Seaman

Art Unit: 1625

TELEFAX CERTIFICATE

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Commissioner for Patents
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RESPONSE TO RESTRICTION REQUIREMENT

Dear Sirs:

In reply to the Office Action dated April 27, 2005 ("the Action"), in which an election/restriction requirement was issued in connection with the above-identified patent application. Applicants respectfully request reconsideration of the election/restriction requirement in view of the following remarks.

Discussion of Election/Restriction Requirement Pursuant to 35 U.S.C. § 121

In the Action, the Examiner required restriction to one of the following groups of Claims under 35 U.S.C. § 121:

Group I: Claims 1 to 6, 8 to 20, 36, 38, 40, 42, 44, 46, and 48 to 49, as drawn to compounds, pharmaceutical composition, method of making and first method of use of compounds of formula (I);

Group II: Claims 7, 22 to 33, 37, 39, 41, 43, 45, and 47, as drawn to pharmaceutical composition and method of treatment using a compounds of formula (I) plus another active ingredient;

Group III: Claim 21 as drawn to a diagnostic agent using a compound of formula (I);

Group IV: Claim 34 as drawn to a diagnostic agent using a compound of formula (I) plus another active ingredient; and

Group V: Claim 35 as drawn to a method for reducing side effects using a compound of formula (I).

Solely to be responsive to the requirement for restriction, Applicants provisionally elect, **WITH TRAVERSAL**, to prosecute the Claims of **Group I**, *i.e.*, claims 1 to 6, 8 to 20, 36, 38, 40, 42, 44, 46, and 48 to 49, drawn to compounds, pharmaceutical compositions, a method of making, and a first method of use of compounds of formula (I). Furthermore, Applicants respectfully request reconsideration of the Requirement for Restriction, or in the alternative, modification of the Requirement for Restriction to allow prosecution of more than one group of claims designated by the Examiner for reasons herein provided.

For a restriction requirement to be proper, the Examiner must show that a serious burden exists if the claims of Groups I-V are examined together. M.P.E.P. § 803 (8th ed., August 2001). The Action, however, fails to make such showing.

Applicants submit respectfully that the Action provides ***no*** evidence or reasoning to support the election/restriction requirement or to show that the requisite serious burden exists. Indeed, the Action does not even show that each of the above-identified groups has attained recognition in the art as requiring separate fields of search.

Upon closer inspection of the claims, it is indeed reasonable to conclude that examining all of the claims together would ***not*** impose a serious burden. Applicants submit respectfully that all of the pending claims represented by Groups I to V recite a compound of

formula (I). Accordingly, the Examiner is faced with a ***simplified*** search in that, by examining the compound of formula (I), the searcher will not have to differentiate between searches specific to different methods or compositions comprising a compound of formula (I). Thus, a search for compounds of formula (I) should be all-inclusive with respect to the claimed subject matter thereby making it easier (rather than burdensome) to search.

The Action further asserts that "the inventions listed as Groups 1-5 do not relate to a single inventive concept under PCT Rule 13.1 because ... they [allegedly] lack the same or corresponding special technical feature [in that] Groups 2 and 4 need to have the compound of formula (I) plus another active ingredient() [and] Groups 1, 3 and 5 have different methods of use that can be used separately" (Action at 2). Applicants disagree respectfully as all of the pending claims ***do*** indeed share the same or corresponding special technical feature, *i.e.*, ***a compound of formula (I)***. Moreover, even if the inventions of Groups I to V are independent or distinct as alleged by the Action, whether restriction is proper still depends upon whether a serious burden exists:

> [i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

(M.P.E.P. § 803 (8th ed., August 2001). For the reasons detailed above, Applicants respectfully submit that the examination of all of the claims pending in the present application would ***not*** present an undue burden on the Examiner. Accordingly, withdrawal of the election/restriction requirement or, in the alternative a modification thereof, is respectfully requested.